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September 29, 2023

VIA CM/ECF

The Honorable Colm F. Connolly
U.S. District Court for the District of Delaware
J. Caleb Boggs Federal Building
Unit 31, Rm. 4124, Courtroom 6A
Wilmington, DE 18901-3570

Re: *GOLO, LLC v. Goli Nutrition, Inc., et al.*, C.A. No. 20-667-CFC

Dear Judge Connolly:

I write regarding the scheduling of a bench trial on the claims that remain to be tried in this case. In addition to Golo's equitable trademark cancellation claims, Golo has pleaded false advertising claims against Goli Nutrition (D.I. 124), and Goli Nutrition has pleaded false advertising counterclaims and a partial trademark cancellation claim against Golo (D.I. 161). These claims were not resolved in the bifurcated trial on likelihood of confusion.

First, the parties have been engaged in ongoing settlement discussions. They have agreed to conduct a further mediation session before December 1, 2023, subject to the mediator's and parties' schedules. It is the parties' desire not to burden the Court with a bench trial on the remaining claims if a resolution is possible.

The parties have conferred extensively and, should the case not be resolved in mediation, the parties are in agreement that the bench trial on these claims can be concluded in no more than three days. The parties worked with each other and

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their experts to identify dates on which all witnesses can be available for trial. Subject to the Court's availability, the parties request that trial be set for February 13-16, 2024.

More specifically, the parties agree that the bench trial should take no more than 21 hours in total (10.5 hours per side, inclusive of 30-minute openings and closing arguments). Because of the technical issues involved in the remaining claims, there are 10 expert witnesses in total. A preliminary list of the witnesses each party expects to call and estimated direct and cross-examination times follows.¹

Witnesses Golo Will Call in Person

Name	Estimated Time
Christopher Lundin (fact witness)	45 minutes
Michael Bitensky (fact witness)	15 minutes
Amber Myers (fact witness)	15 minutes
Alyson Mitchell (food science expert testifying in support of Golo's claims)	45 minutes
Daniel J. Merenstein (medical expert testifying in defense of Goli's counterclaims)	45 minutes
Bruce Isaacson (survey expert testifying in support of Golo's claims and in defense of Goli's counterclaims)	45 minutes
David Haas (damages expert testifying in support of Golo's claims)	30 minutes
Total	4 hours

Goli Nutrition's estimated cross-examination time for each of Golo's live witnesses is 25 minutes (**2 hours 55 minutes, in total**). Goli Nutrition's estimated re-direct examination time for Mr. Bitensky is **10 minutes**.

¹ The parties have undertaken a good-faith effort to identify the witnesses and evidence that they intend to submit to the Court in connection with the pretrial order for the false advertising case, but agree these lists are not binding and are subject to revisions and objections. At this juncture, the parties each have objections, but will attempt to resolve those objections before submitting a draft pretrial order.

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Witnesses Golo May Call Live or by Deposition

Name	Estimated Time
Terry Shirvani (fact witness)	10 minutes
Dee Agarwal (fact witness)	10 minutes
Nicol Bitensky (fact witness)	10 minutes
Cameron Maag (fact witness)	10 minutes
Kathleen Power (fact witness)	15 minutes (if not called by Goli)
Montgomery Bernardi (fact witness)	15 minutes (if not called by Goli)
Vipesh Agarwal (fact witness)	10 minutes
Bragg Live Foods (fact witness)	10 minutes
Nutrasource (fact witness)	10 minutes
Better Nutritionals (fact witness)	10 minutes
Tabitha Brown (fact witness)	5 minutes
Jennifer Affleck (fact witness)	5 minutes
Total	1 hour 45 minutes

Goli's estimated counter deposition designation/cross-examination time for each of these witnesses is 5 minutes (**1 hour, in total**).

Witnesses Goli Nutrition Will Call in Person

Witness	Estimated Time
Bethany Jolley (fact witness)	30 minutes
Nisha Nonato (fact witness)	30 minutes
Kathleen Power or Montgomery Bernardi (fact witness)	15-30 minutes
Lawrence Cheskin (medical expert testifying in defense of Golo's claims and in support of Goli Nutrition's counterclaims)	45 minutes
Sean O'Keefe (food scientist expert testifying in defense of Golo's claims)	30 minutes

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Carlo Contoreggi (medical expert testifying in support of Goli Nutrition's counterclaims)	30 minutes
Laura O'Laughlin (survey expert testifying in defense of Golo's claims and in support of Goli Nutrition's counterclaims)	30 minutes
Keith Ugone (damages and harm expert testifying in defense of Golo's claims and in support of Goli Nutrition's counterclaims, subject to D.I. 656)	45 minutes
Total	4 hours 15 minutes – 4 hours 30 minutes

Golo's estimated cross-examination time for each of Goli's live witnesses is 25 minutes (**2 hours 55 minutes – 3 hours 20 minutes, in total**).

Witnesses Goli Nutrition May Call by Deposition

Name	Estimated Time
Terry Shirvani (fact witness)	5-10 minutes
Jeffrey Kotzen (fact witness)	5-10 minutes
Jennifer Brooks (fact witness)	10-20 minutes
Total	20-40 minutes

Golo's estimated counter deposition designation time for each of these witnesses is 5 minutes (**15 minutes, in total**).

Rebuttal

To the extent necessary, Golo will present rebuttal testimony from Timothy Calkins (expert rebuttal witness to Dr. Ugone, subject to D.I. 656) and others. Golo reserves up to **35 minutes for rebuttal**. To the extent necessary, Goli Nutrition will present rebuttal testimony and evidence to rebut Golo's affirmative defenses and to support Goli Nutrition's counterclaims and affirmative defenses. Goli Nutrition anticipates **45 minutes for rebuttal** purposes.

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The parties anticipate working out a specific pretrial exchange schedule culminating with the filing of a Pretrial Order for this phase of trial in accordance with the Court's orders and agree to file their Pretrial Order on January 23, 2024 should the February 13-16, 2024 trial dates work for the Court.

Counsel are available to discuss this matter at the Court's convenience.

Respectfully submitted,



Chad S.C. Stover

cc: Counsel of Record (via CM/ECF)